

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

No. 1291

**Introduced by Assembly Member Pavley  
(Coauthors: Assembly Members Chan and Goldberg)**

February 22, 2005

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~~An act to add Section 110177 to the Health and Safety Code, relating to public health. An act to add Article 7 (commencing with Section 108516) to Chapter 4 of Part 3 of Division 104 of the Health and Safety Code, relating to public health.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1291, as amended, Pavley. ~~Food Consumer products:~~ state-certified logo.

Existing law, the ~~Sherman Food, Drug, and Cosmetic Law California Hazardous Substances Act~~, requires the State Department of Health Services to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act ~~consumer products containing hazardous substances.~~

~~Existing law authorizes the department to publish reports summarizing related court judgments, and to distribute food-related information necessary for the protection of the public health.~~

This bill would require the California Environmental Protection Agency to, by January 1, 2007, ~~establish design~~ a state-certified logo that could be affixed to ~~food consumer~~ products that ~~are proven to be free of, or contain acceptable levels of, do not contain, produce, or emit, certain toxic substances, as specified, that could harm a child's health, to establish a testing process for participating food products, and to conduct a public awareness program or that for which the~~

*Office of Environmental Health Hazard Assessment issues a certificate of compliance that the substance, if present in the product, will not harm the health or development of a developing fetus, infants, or child.*

*The bill would require a manufacturer that wishes to affix the logo to a product to submit a certificate of compliance to the Department of Toxic Substances Control and would require the department, upon determining the certificate of compliance meet the bill's requirements, to authorize the manufacturer of that product to affix the label. The bill would require the department to impose a fee in an unspecified amount upon a manufacturer that submits such a request to the department and would require the department to deposit the fees into the Children's Health Environment Right to Know Account, which the bill would create in the State Treasury. The bill would authorize the funds in the account to be expended by the department and office to administer and enforce the bill's requirements and to fund a public education program.*

*The bill would require the department, if a manufacturer provides the department with a false or misleading certificate of compliance, to refer the false or misleading certificate to the Attorney General for prosecution for fraud. The bill would also require the office or the department to refer a manufacturer who provides false or misleading information to the Attorney General for prosecution for fraud.*

*The bill would allow the department to assess a civil penalty upon any person who violates the bill, of not more than \$25,000 for each violation, pursuant to notice and hearing. The bill would require the civil penalties received by the department to be deposited in the Children's Health Environment Right to Know Account.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 110177 is added to the Health and~~
- 2 ~~Safety Code, to read:~~
- 3 *SECTION 1. Article 7 (commencing with Section 108516) is*
- 4 *added to Chapter 5 of Part 3 of Division 104 of the Health and*
- 5 *Safety Code, to read:*

Article 7. Green Labeling

108516. For purposes of this article, the following definitions shall apply:

(a) "Certificate of compliance" means a certificate issued by the office to a manufacturer pursuant to subdivision (b) of Section 108517, or a certificate furnished by a manufacturer of a consumer product pursuant to subdivision (c) of Section 108517.

(b) Notwithstanding Section 108115, "Department" means the Department of Toxic Substance Control.

(c) "Manufacturer" means any person who manufactures a participating consumer product that is sold in this state.

(d) "Office" means the Office of Environmental Health Hazard Assessment.

(e) "Participating consumer product" means any product sold in this state that is intended to be used directly by the purchaser of that product and is not resold or used in the manufacture of a subsequent product.

(f) "Person" means an individual, trust, firm, joint stock company, partnership, limited liability company, association, corporation, government corporation, and a state or local agency.

108517. (a) On or before January 1, 2007, the California Environmental Protection Agency shall design a state-certified logo that a manufacturer may affix to a participating consumer product that does not contain, produce, or emit any of the following substances or is issued a certificated of compliance pursuant to subdivision (b):

(1) A substance identified by the State Air Resources Board pursuant to Chapter 3.5 (commencing with Section 39650) of Part 2 of Division 20.

(2) A substance for which the State Department of Health Services has established a maximum containment level standard pursuant to Chapter 12 (commencing with Section 116270) of Part 12.

(3) A substance for which the office has established a public health goal pursuant to Section 116361.

(4) A substance listed pursuant to Section 25249.8.

(5) A substance identified as a carcinogen, reproductive toxin, or developmental toxin by an entity with which the office may

1 consult pursuant to Chapter 6.6 (commencing with Section  
2 25249.5) of Division 20, including, but not limited to, the  
3 National Toxicology Program, the National Institute of  
4 Occupational Safety and Health, the United States  
5 Environmental Protection Agency, the United States Food and  
6 Drug Administration, and the International Agency for Research  
7 on Cancer.

8 (6) A substance for which the office determines causes harm to  
9 the health or development of a developing fetus, an infant, or a  
10 child, pursuant to subdivision (b) of Section 108520.

11 (b)(1) If a product contains a substance identified in  
12 subdivision (a), the manufacturer of that product may request the  
13 office to determine whether the substance, as present in the  
14 product, will not harm the health or development of a developing  
15 fetus, an infant, or a child. A manufacturer that requests the  
16 office to make that determination for a product shall enter into  
17 an agreement with the office to reimburse the office for its cost of  
18 undertaking such a review.

19 (2) Upon determining that the substance present in the  
20 product will not harm the health or development of a fetus, child,  
21 or infant, pursuant to paragraph (1), the office shall issue a  
22 certificate of compliance to the manufacturer.

23 (c) A product manufacturer who wishes to affix the  
24 state-certified logo to a product shall submit a certificate of  
25 compliance to the Department of Toxic Substances Control  
26 stating that the product does not contain, produce, or emit any  
27 substance listed in subdivision (a) or submit a certificate of  
28 compliance issued by the office pursuant to paragraph (2) of  
29 subdivision (b).

30 (d) If the department determines that a certificate of  
31 compliance submitted pursuant to subdivision (c) meets the  
32 requirements of this article, the department shall authorize the  
33 manufacturer of the product to affix the state-certified logo on  
34 the product. An authorization to affix the logo on the product  
35 shall only be valid for one calendar year.

36 (e) If a consumer product for which the department has issued  
37 an authorization pursuant to subdivision (d) is to be  
38 reformulated, including, but not limited to, by the addition of an  
39 ingredient, the manufacturer shall submit a new certificate of  
40 compliance to the department in accordance with subdivision (c),

1 *and receive the department's authorization, before affixing the*  
2 *state-certified logo on the reformulated product.*

3 *(f) The office shall monitor and review the substances*  
4 *identified in subdivision (a), and shall inform the department and*  
5 *the manufacturers of participating consumer products regarding*  
6 *any changes to that list.*

7 *108518. (a) Except as provided in subdivision (b), the*  
8 *department, pursuant to the California Public Records Act*  
9 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*  
10 *Title 1 of the Government Code), shall provide the public with*  
11 *access to all information relating to a product that has been*  
12 *submitted to the department by a manufacturer pursuant to this*  
13 *article.*

14 *(b) (1) The department shall keep confidential any*  
15 *information identified by the manufacturer, pursuant to*  
16 *paragraph (2), as proprietary in nature, including a trade*  
17 *secrets, as defined in Section 25173.*

18 *(2) A manufacturer who provides information to the*  
19 *department or the office pursuant to this article shall, at the time*  
20 *of submission, identify all information that the manufacturer*  
21 *believes is proprietary in nature. The department shall make*  
22 *available to the public any information not identified by the*  
23 *manufacturer as proprietary in nature.*

24 *108519. (a) The department shall impose a fee in the amount*  
25 *of \_\_\_\_\_ dollars (\$\_\_\_\_\_) upon a manufacturer who submits a*  
26 *certificate of compliance to the department to reimburse the*  
27 *department and the office for the reasonable expenses specified*  
28 *in paragraphs (1) and (2) of subdivision (b). A manufacturer*  
29 *shall submit the fee each time a certificate of compliance is*  
30 *submitted to the department for review.*

31 *(b) The department shall deposit all fees or penalties collected*  
32 *under this article into the Children's Health Environment Right*  
33 *to Know Account, which is hereby created in the State Treasury.*  
34 *The funds in the Children's Health Environment Right to Know*  
35 *Account may be expended by the department and the office, upon*  
36 *appropriation by the Legislature, for both of the following*  
37 *purposes:*

38 *(1) To cover all costs incurred by the department and by the*  
39 *office to administer and enforce this article, including, but not*  
40 *limited to, the review and assessment of toxic substances, and*

1 *products, and the auditing of products for compliance with this*  
2 *article.*

3 *(2) To fund a public education campaign designed to inform*  
4 *the public about the state-certified logo program.*

5 *(c) Notwithstanding Section 16475 of the Government Code,*  
6 *any interest earned upon funds in the Children's Health*  
7 *Environment Right to Know Account shall be deposited in that*  
8 *account for expenditure pursuant to this article.*

9 *108520. (a) If a person believes a substance not otherwise*  
10 *identified in paragraphs (1) to (5), inclusive, of subdivision (a) of*  
11 *Section 108517 causes harm to the health or development of a*  
12 *developing fetus, an infant, or a child, the person may submit a*  
13 *request the office to include that substance for purposes of*  
14 *paragraph (6) of subdivision (a) of Section 108517.*

15 *(b) When an individual or entity makes a request pursuant to*  
16 *subdivision (a) to the office, the office shall assess the substance*  
17 *based upon the best available science and information and,*  
18 *based upon that assessment, shall determine whether the*  
19 *substance causes harm to the health or development of a*  
20 *developing fetus, an infant or a child and should be listed*  
21 *pursuant to paragraph (6) of subdivision (a) of Section 108517.*

22 *108522. A manufacturer who submits a certification of*  
23 *compliance for a state-certified logo pursuant to this article may*  
24 *be subject to an audit to ensure that the product authorized to*  
25 *display the logo is in compliance with the requirements of this*  
26 *article.*

27 *108523. The department shall enforce the requirements of*  
28 *this article.*

29 *108524. If a person believes a product authorized to display*  
30 *a state-certified logo does not meet the criteria of this article,*  
31 *that person may request the department to immediately terminate*  
32 *the product's authorization to affix that logo. If the department*  
33 *determines the product's certificate of compliance does not*  
34 *comply with this article, the department shall immediately inform*  
35 *the manufacturer that the product shall not display the*  
36 *state-certified logo, and the manufacturer shall immediately*  
37 *remove the logo from the product and, or, stop the sale and*  
38 *distribution of the product if the logo cannot be removed.*

39 *108521. (a) If a manufacturer provides the department with*  
40 *a false or misleading certificate of compliance, the department,*

1 *within 30 days of making this determination, shall refer the false*  
2 *or misleading certificate to the Attorney General for prosecution*  
3 *for fraud.*

4 *(b) If a manufacturer provides the office or department with*  
5 *false or misleading information concerning a substance*  
6 *identified in subdivision (a) of Section 108517, the office or the*  
7 *department, as the case may be, within 30 days of making this*  
8 *determination, shall refer the false or misleading information to*  
9 *the Attorney General for prosecution for fraud.*

10 *108525. Any person who violates this article, may be*  
11 *assessed a civil penalty by the department of not more than*  
12 *twenty-five thousand dollars (\$25,000) for each violation,*  
13 *pursuant to notice and hearing. Any civil penalties received*  
14 *pursuant to this subdivision shall be deposited in the Children's*  
15 *Health Environment Right to Know Account.*

16 ~~110177. (a) By January 1, 2007, the California~~  
17 ~~Environmental Protection Agency, in consultation with the~~  
18 ~~department, shall establish a state-certified logo to be affixed~~  
19 ~~only to participating food products that are proven to be free of,~~  
20 ~~or contain acceptable levels of, toxic substances that could harm~~  
21 ~~a child's health.~~

22 ~~(b) The agency shall establish a process whereby a~~  
23 ~~manufacturer or producer of food may apply for participation in~~  
24 ~~the logo program. The process shall provide for testing of the~~  
25 ~~food items to determine compliance with the standards.~~

26 ~~(c) The agency, with the assistance of the department, shall~~  
27 ~~conduct a public awareness program to accomplish all of the~~  
28 ~~following:~~

29 ~~(1) Inform the public about the effects upon young children of~~  
30 ~~toxins commonly present in foods.~~

31 ~~(2) Introduce the logo and inform the public about the~~  
32 ~~program.~~

33 ~~(3) Inform the public about the high standards required of~~  
34 ~~participating food products and the health benefits to young~~  
35 ~~children of avoiding the toxins.~~